

an unauthorized attachment may be made, and Licensee agrees that each such unauthorized attachment shall be presumed to have existed for a period of four (4) years prior to its discovery. This presumption may be rebutted by documentation establishing, to Licensor's reasonable satisfaction, the actual date of attachment. With respect to all such unauthorized attachments, within forty-five (45) days of demand by Licensor, Licensee shall pay to Licensor in a lump sum, plus interest at the Interest Rate (as defined in Section 22.b.), applicable attachment fees retroactive to the presumed date of unauthorized attachment. In the event Licensee has a bona fide claim that one or more attachments are not unauthorized, Licensee shall pay the undisputed amount of retroactive attachment fees, plus interest at the Interest Rate, within the above 45-day period and shall within such period identify in writing the specific poles, including without limitation the location of same (where practicable) that are the subject of the dispute, and shall submit within such period its reasons as to why each attachment is not unauthorized. Within 45 days after the dispute is resolved and an invoice rendered, Licensee shall pay for the unauthorized attachments no longer in dispute the applicable attachment fees in lump sum, plus interest at the Interest Rate, retroactive to the presumed date of unauthorized attachment.

b. In addition to the retroactive Attachment fees specified in paragraph 23.a, Licensee shall pay as a penalty fee the amount of fifty dollars (\$50) per unauthorized attachment, whether discovered in a field count or otherwise. The parties agree that no unauthorized attachment penalties shall apply for the first 2% of any variance identified in a field count as measured against existing records.

c. No act or failure to act by Licensor with regard to unauthorized attachments shall constitute a ratification of such attachments. In addition to payment of amounts as specified in this paragraph, Licensee shall submit an application for attachment within 30 days of notification that the unauthorized attachment has been discovered.

24. Damage to Licensor's Facilities Caused by Licensee

In conducting its operations under this Agreement, Licensee shall avoid causing damage to facilities of Licensor or of other parties attached to poles, equipment, or any other facilities of Licensor, and Licensee hereby assumes full responsibility for all such damage caused by it or its contractors. Licensee shall make an immediate report to the Licensor or to the other party in the event that such damage occurs and the Licensee hereby agrees to reimburse the Licensor or other party for the expense of making repairs.

25. Responsibilities Associated with Licensee's Work on Poles of the Licensor

a. With respect to the installation of its Attachments to Licensor's distribution poles or other work undertaken by Licensee pursuant to this Agreement, Licensee shall be solely responsible for ensuring that all work is performed in accordance with the requirements of this Agreement, the NESC, and other applicable Codes and Laws. Licensor shall not exercise any control over the manner in which such work is performed. Licensee shall not cause or permit any person, other than a qualified and authorized worker who knows and appreciates the character of electricity and the danger of working in proximity to wires and other electric distribution facilities which are or may be energized with electricity at the various voltages used in supplying electricity for public use, to climb any pole, or to work upon any of Licensee's cable, wire, appliance,

equipment or facility attached to any pole, equipment, or facility owned or controlled by Licensor; and, as to any such person as may be authorized or permitted by Licensee to climb any such pole or to perform any such work, it shall not be Licensor's responsibility to warn him of the danger involved in working or being close to Licensor's wires and facilities, nor to provide supervision over the work being done by such person at any time. Before any person performs any work for Licensee on or near any poles, equipment or facilities owned or occupied by Licensor, Licensee must adequately warn such person of the dangers inherent in making contact with the electrical conductors of Licensor and of failing to maintain the distance from such conductors required by the Codes and Laws. IN NO EVENT SHALL A LICENSEE REPRESENTATIVE CLIMB OR WORK ABOVE THE COMMUNICATION SPACE ON THE POLE.

b. Prior to its employees or contractors climbing or performing other work on any Licensor poles, Licensee shall determine for itself whether such pole is safe to climb or safe for the performance of other work on or near the pole. As set forth in paragraph 11.b above, Licensor or its contractor may from time to time inspect poles to which Licensee is attached, and may place tags or other markings on such poles indicating the condition of the pole and/or whether the pole is safe to climb. LICENSEE SHALL INFORM ITS EMPLOYEES AND CONTRACTORS OF THE MEANING OF SUCH TAGS OR OTHER MARKINGS. Licensor's election to inspect any pole is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement. The placement of an inspection tag or other marking, or lack thereof, on a pole shall not relieve Licensee of its responsibility to determine for itself whether any particular pole is safe for climbing or other work.

26. Indemnification

a. The use of Licensor's distribution poles as provided for in this Agreement is not for the benefit of Licensor; rather, it is solely for the benefit of Licensee in carrying on its business of supplying the services authorized herein; and it is understood that the hazards of electricity transmitted at voltages necessary for public use over Licensor's facilities may be increased by the existence of any of Licensee's cables, wires, appliances, equipment or facilities which may be attached to Licensor's distribution poles, equipment, or facilities; and this Agreement is entered into with the explicit understanding that, except as set forth below, Licensee assumes sole responsibility and liability for all injuries and damages arising, or claimed to have arisen, by, through or as a result of any of its cables, wires, appliances, equipment or facilities (or of a third-party overlasher to Licensee's cables, wires, appliances, equipment or facilities) attached to Licensor's poles, equipment, or facilities, it being understood, however, that Licensee shall have no liability for injuries and damages (a) caused by, through or as a result of the sole negligence of Licensor or its contractors; or (b) caused by, through or as a result of the willful or wanton misconduct of Licensor or its contractors; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same poles as Licensee's cables, wires, appliances, equipment or facilities.

b. Accordingly, without limiting the effect of the provision of the immediately preceding paragraph, and except as set forth below, Licensee expressly agrees to indemnify, defend and save harmless Licensor and the Indemnified Parties from all liability, claims, demands,

actions, judgments, loss, costs and expenses (collectively, "Claims") arising or claimed to have arisen by, through or as a result of any of Licensee's cables, wires, appliances, equipment or facilities attached to Licensor's poles, equipment, or facilities, arising out of the breach of the representations and warranties of Licensee hereunder, or as a result of the acts or omissions of any of the Licensee Entities, in respect to (a) damage to or loss of property (including but not limited to property of Licensor or Licensee); (b) injuries or death to persons (including but not limited to injury to or death of any Licensee Entities or members of the public); (c) any interference with the television or radio reception of, or with the transmission or receipt of telecommunications by, any person which may be occasioned by the installation or operation of Licensee's cables, wires, appliances, equipment or facilities; (d) the proximity of Licensee's cables, wires, appliances, equipment or facilities to the wires and other facilities of Licensor; (e) any claims upon Licensor for additional compensation for use of its distribution rights-of-way for an additional use; and (f) any injuries sustained and/or occupational diseases contracted by any of the Licensee Entities of such nature and arising under such circumstances as to create liability therefor by Licensee or Licensor under the Alabama Workers' Compensation Act and all amendments thereto, including also all claims and causes of actions of any character which any such employees, the employers of such employees, and all persons or concerns claiming by, under or through them or either of them may have or claim to have against Licensor resulting from or in any manner growing out of any such injuries sustained or occupational diseases contracted; it being understood, however, that Licensee shall have no liability for injuries and damages (a) caused by, through or as a result of the sole negligence of Licensor or its contractors; or (b) caused by, through or as a result of the willful or wanton misconduct of Licensor or its contractors; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same poles as Licensee's cables, wires, appliances, equipment or facilities. In any matter in which Licensee shall be required to indemnify Licensor hereunder, Licensee shall control the defense of such matter in all respects, and Licensor may participate, at its sole cost, in such defense. Licensor shall not settle or compromise any matter in which Licensee is required to indemnify Licensor without the prior written consent of Licensee. Licensor shall seek indemnification from each attacher or joint user involved in causing any Claims against Licensor on a non-discriminatory basis.

27. Licensee's Insurance Requirements

a. Licensee shall obtain and maintain during the term of this Agreement, as long as Licensee's Attachments remain on Licensor's poles, and for a period of two (2) years after removal of Licensee's Attachments, insurance providing at a minimum the coverages and limits set forth in Exhibit C.

b. Licensee, by signing this Agreement waives, and will require its insurers to issue an endorsement to the above policy or policies to waive, all rights of subrogation against Licensor with respect to any claim or loss payable or paid under each of the above policies. Licensee shall cause its insurers to include Licensor as an Additional Insured, as their interest may appear under this Agreement, on the policies set forth above, except for the workmen's compensation and employer's liability. The company or companies issuing such insurance shall be licensed, authorized or permitted to do business in the State of Alabama, acceptable to Licensor, and shall have an A.M. Best's rating of AIII or better (or equivalent).

c. Licensee's insurance shall be primary insurance with respect to activities and work related to this Agreement and insurance of Licensor shall be excess of Licensee's insurance and shall not contribute with it. To the extent that Licensee utilizes deductibles or self-insurance in connection with the insurance coverages required herein, all such deductibles and self-insured amounts shall be for the account and expense of Licensee and shall be considered the same as primary insurance and Licensor's insurance shall not contribute with same.

d. Licensee shall submit to Licensor certificates of insurance by each company insuring Licensee and Licensor, as Additional Insured, signed by an authorized representative of such insurance company, certifying that the insurance coverages required hereunder are in effect for purposes of this Agreement, that the insurance policies cover Licensee's indemnity obligations in Section 26 of this Agreement, that Licensor is an additional insured party as their interest may appear under this Agreement on each of the above-required policies, and that the right of subrogation against Licensor is waived with respect to the above policies. Upon receipt of notice from its insurer(s) Licensee shall provide Licensor with thirty (30) days' prior written notice to Licensor. It is understood that the provisions requiring Licensee to carry insurance shall not be construed as in any manner waiving or restricting the liability of Licensee as to any obligations imposed under this Agreement or limit the liability of Licensee whether or not the same is covered by insurance.

e. Licensee, shall require all contractors and subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Licensee. Licensee shall also require all contractors and subcontractors to provide certificates of insurance including Licensor as an Additional Insured as their interest may appear under this Agreement. Should Licensee fail to require any one or more of its contractors to maintain such coverage and minimum requirements of this Section 27, and should such failure cause or contribute directly or indirectly to loss, damage or liability to Licensor, then Licensee shall, in accordance with the section hereof entitled "Indemnification", indemnify and hold harmless such person or entity.

f. Licensee and its contractors are absolutely prohibited from performing any work under this Agreement on or near any of Licensor's poles, including but not limited to removal of Attachments after termination of this Agreement, at any time during which Licensee does not have the insurance required by this Section 27.

28. Abandonment of Poles by Licensor

a. If Licensor desires at any time to abandon any distribution pole upon which an Attachment of Licensee is located, Licensor shall give Licensee notice in writing or electronically to that effect at least thirty (30) days prior to the date on which it intends to abandon such distribution pole. Licensor's prior written notice shall be given at least thirty (30) days after Licensee has received a 30-day notice to transfer or abandon certain poles. If at the expiration of such period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments therefrom, such distribution pole shall thereupon become the property of Licensee, and Licensee shall indemnify and save harmless Licensor and the Indemnified Parties from all obligation, liability, damage, costs, expenses, and charges incurred thereafter because of, or arising out of, the presence or condition of such pole or of any Attachments thereon; and shall in addition pay Licensor upon receipt of invoice a sum equal to the then value in place, as

determined by the Licensor, of such abandoned distribution pole or poles, or such other equitable sum as may be agreed upon between the parties.

b. Nothing in paragraph 28.a shall be construed to limit, in any way, Licensor's rights to require Licensee to remove its Attachments as set forth in paragraph 15.c.

29. Default of the Agreement

If Licensee shall fail to comply with any of the provisions of this Agreement, or shall default in any of its obligations under this Agreement, and shall fail to cure such default or non-compliance within thirty (30) days (or other such period as may be reasonably necessary in light of the nature of the default), after written notice from Licensor to correct such default or non-compliance, Licensor may, at its option, with an additional thirty (30) days written notice, terminate this Agreement covering the distribution poles as to which such default or non-compliance shall have occurred and remove such Attachments of Licensee at Licensee's expense, and no liability therefore shall be incurred by Licensor because of such action. In the event Licensee fails to meet its obligations under this Agreement, including but not limited to Licensee's payment, insurance, performance assurance and/or indemnification obligations, then, as an alternative to the foregoing, Licensor may, after the cure periods above, at its option, immediately terminate this Agreement without prior notice and/or forbid new attachments to any of its distribution poles by Licensee until such time as any failure to comply is corrected.

30. Waiver of Terms

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect. No such failure or enforcement of any term or condition hereunder by either party shall be deemed to be a waiver unless the same is waived in writing by the other party.

31. Rights of Other Parties

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Licensor, by contract or otherwise, to others, not parties to this Agreement, to use any distribution poles covered by this Agreement; and Licensor shall have the right to continue and extend such rights and privileges. The access privileges herein granted are non-exclusive and shall at all times be subject to such existing contracts and arrangements to the extent consistent with applicable law.

32. Assignment; Leasing; Overlashing

a. Under no circumstances shall Licensee assign or transfer the whole or any part of this Agreement without the prior consent in writing of Licensor. Unless Licensor gives prior express written consent to assignment or transfer, the original counterparty (Licensee) shall remain fully liable to Licensor under this Agreement. Licensee shall give prompt notice to Licensor of any intended assignment and with such notice shall submit substantiating documentation of such proposed assignment. Any assignment or transfer attempted without Licensor's prior written consent shall be null and void. Consent shall not be unreasonably withheld, provided that

Licensee's successor in interest provides adequate proof at least sixty (60) days prior to assignment or transfer that it can fulfill the contractual obligations under this Agreement.

b. In the event Licensee sells or transfers any attachments subject to this Agreement, Licensee agrees to execute and provide to Licensor at least sixty (60) days prior to the sale, transfer, or assignment, Exhibit F hereto.

c. Under no circumstances shall Licensee sub-license its rights under this Agreement, or sub-license its Attachments made pursuant to this Agreement.

d. At least fifteen (15) days prior to any overloading of Licensee's facilities, Licensee shall provide written notice to Licensor of its intent to overload, by completing and submitting Licensor's Overload Notification Form ("ONF"). It shall be Licensee's duty in all instances to ensure that the overloading, attaching or leasing described in the submitted ONF does not overload the pole(s). In the event Licensee overloads its facilities, or permits a third party to overload its facilities, such overloading shall constitute an express representation and warranty from Licensee that said overloading does not overload the pole(s), is not made to a pole with a violation of the NESC or Licensor's Policies and Procedures, and that said overloading does not constitute an immediate threat to persons or property. The parties agree that this representation and warranty is made merely by virtue of Licensee's overloading or permission for third party overloading and that said representation and warranty shall not be effected by Licensee's failure to complete and submit an ONF. Prior to overloading or permitting overloading on its facilities Licensee shall complete or have completed a pole loading analysis sufficient to allow Licensee and Licensor to determine whether the contemplated overloading will or will not overload Licensor's poles, cause or create a violation of the NESC or Licensor's Policies or Procedures, or cause or create an immediate threat to persons or property. Licensee shall submit all information used in this pole loading analysis with its ONF.

e. Neither Licensee nor any third party is permitted to overload Licensee's facilities where such overloading would be made on poles or attachments with violations of the NESC or Licensor's Policies and Procedures. Neither Licensee nor any third party is permitted to overload Licensee's facilities where such overloading creates or poses an immediate threat to persons or property. Any leasing or overloading in violation of this Section 32 shall constitute a default of the Agreement and shall be subject to the remedies set forth in other provisions of this Agreement.

33. Reorganization; Buyout; Change of Name; Transfer of Assets

a. Licensee shall give written notice to Licensor within thirty (30) days of the effective date of any reorganization, buyout, sale or change of name of Licensee, or the merger with any other telecommunications carrier or cable television system, not an affiliate to Licensee. Such notice shall include, at a minimum, the name of the new company, the new contact information required in the "Notices" section of this Agreement, and the effective date of such transaction.

b. In the event Licensee sells some or all of its assets covered by this Agreement to another entity, Licensee shall remain liable for any and all obligations arising out of such Attachments until such time as the purchaser has executed a new pole license agreement with Licensor (unless Licensor has consented to an assignment of this Agreement) and provided to